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# A NATIONAL CONVENTION.

(for the election of  
the President.)

S. S. Nicholas.

Addressed to the  
Kentucky Legislature.)



TO THE MEMBERS  
OF THE  
KENTUCKY LEGISLATURE.

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JUSTICE is the only reliable permanent basis for a representative republic. So the founders of our Government taught—so history and political science teach.

Equality, so far as reasonably practicable, in the apportionment of representation, and thereby in the distribution of power among the people, is indispensable to the required justice. Governments may last, as governments have lasted, for many years where such justice does not obtain; but in modern republics, where free suffrage controls the government, its want will not be long tolerated, except at the expense of a small minority. When the injustice operates against a large majority of the nation, its continued toleration can not be rationally expected. Men will not endure wrongs when they have the power to right them. If the organic law does not afford the legal means for obtaining redress, the injured large majority of a nation will be apt to reach it by other means, as was done by the “barn-burner” movement in New York. Resorts to such other means are very pernicious in a republic. They should be prevented, if practicable, by a peaceful, legal removal of the injustice. Such anticipatory remedy is among the highest duties of American statesmanship. Every care should be taken to prevent a national “barn-burner” movement; that is, the adoption and enforcing of a new Federal Constitution outside the prescribed mode. It is the greatest present peril to the nation. Let all men aid in finding and applying the proper preventive.

The grievance causing this peril is the inequality and gross injustice toward a vast majority of the nation in the apportionment of representation, with the consequent distribution of power among the people.

The nineteen smallest States, who appoint a majority of our Senators, have, according to the last census, in round numbers, only a little over five millions of population, whilst the other seventeen States have a population of over twenty-six millions. Thus, with only one sixth of the population of the whole Union, those smaller States appoint a majority of the body having a moiety of the whole legislative power of the nation, with a supervisory veto on most of its executive power, and a corresponding participation in its vast patronage.

The nine smallest States, with an aggregate population of only nine hundred thousand, appoint eighteen Senators, whilst the three largest States, with a population of over nine millions, are allowed to appoint only six; whereas, upon the average basis of the population that appoints a Senator from each of those smallest States, those nine millions of people would be entitled to appoint one hundred and eighty Senators instead of only six; that is, the people of those nine States are allowed ten times as much of this political power as they are fairly entitled to have. In other words, the nine hundred thousand appoint three times more Senators than the nine millions.

When the election of President devolves on the House of Representatives, those nineteen smallest States control the result, and can defeat the wishes of five sixths of the nation as to who shall or shall not be President. Thus a candidate who receives less than twenty electoral votes, and less than ten thousand of the popular votes, may be made President, in despite of the two hundred electoral and five million popular votes against him. And thus, whilst deluding the nation with the belief that the election of President is given to a majority of the people, it turns out in practice to be a mere illusory mode for transferring the election to a small *minority*. Such result, occurring after an excited contest for the Presidency, will almost inevitably cause a peaceable or forcible disruption of the Government, to be accompanied or followed by probable civil war.

The nine millions of people of the three largest States, with their twelve hundred thousand voters, can not be expected to tolerate the nullifying of their will, on so great an occasion, by the one hundred and fifty thousand people inhabiting three of the smaller States, with their less than twenty thousand voters. Human nature can not tamely endure such injustice.

According to rational probability, hereafter the election of President will generally devolve upon the House. Such is the natural result whenever the nation ceases to be divided by more than two great political parties, as was proved at the end of Monroe's administration. Those issues have nearly all become obsolete, which heretofore have forced the whole nation into one or the other of only two great parties. The instances hereafter will be rare indeed when the predominating popularity and influence of any two candidates will divide near the whole vote of the nation between them. Henceforth an election by the House must become the general rule, and an election by the people only the occasional exception.

It is not to be believed that such gross inequality in the representation, such enormous injustice toward so great a majority of the nation—four fifths at the least—will be long peaceably endured. No prediction need be attempted as to the probable mode that will be adopted in pursuit of a peaceable redress. One mode the framers of the Constitution themselves pointed out, in order to reconcile the nation to its adoption; that is, the power of a bare majority of the States to bring the Federal Government to an end, by refusing to appoint Senators, or by non-attendance of their Senators, as less than a majority of the whole number is not “a quorum to do business.” It needs no great prescience to know that whenever the seventeen large States, holding such a preponderance of wealth and population, are resolved on obtaining redress, they will have little difficulty in inducing two of the smaller States to unite in any movement found necessary for its accomplishment. But there is a simpler and easier mode than that. Eight of the larger States appoint a decided majority of the House of Representatives, and the continued absence of a majority of its members would equally terminate the Government. When brought to a stand-still by either mode, redress becomes an imperative necessity, even if not otherwise attainable, by



the "barn-burner" plan of a new Constitution illegitimately obtained.

To avoid this mode of redress by breaking through or disregarding the Constitution, it will be much better to remove the grievance, as far as practicable, by a voluntary surrender of the equality of State representation in the Senate, and of State voting in a Presidential election before the House of Representatives.

This can be effected only by a National Convention, as the Constitution says "no amendment shall deprive a State, without its consent, of its equal suffrage in the Senate," for it would be flagrantly wrong to receive and act upon the consent of some without that of all the States. Besides, there is no other mode so appropriate for obtaining the consent and making so radical a change in the Constitution. When a convention, assembled at the request of two thirds of the States, representing more than three fourths of the nation, shall demand such a change, it is not presumable that any State will be so recklessly selfish as to refuse its consent.

But should there be such refusal, then its effect can be obviated by the convention making a new Constitution, which, when ratified by two thirds of the States and of the nation, would rightfully and legally supersede the present Constitution as to the ratifying States, leaving the others to seek admission in the new union whenever they should so elect. There is a high precedent for this. The Convention which formed the Constitution were appointed to perform the humbler duty of amending the Articles of Confederation, and for no other purpose; but, such mere amendment not answering the emergency, they took upon themselves, without any legal authority for so doing, to frame the Constitution, and thus, with aid of its ratification by two thirds of the States, it was brought into rightful legal existence. Whatever of moral delinquency there may be in such perversion of a public trust, it will compare favorably with recent action of Congress in perverting the trust to admit new States into the Union into the manufacture of new States out of the Territories having not a third of the requisite population, for the sole purpose of accomplishing an otherwise impracticable policy.

The way to obtain the demand of a national convention, by the requisite two thirds of the Legislatures, is for Congress to recom-

mend the adoption by them of the prerequisite resolutions, and the way to incite Congress thereto is for some of the States to take initiatory steps.

There are various other important reasons for holding a national convention, among which the following may be instanced as most prominent, if not most important, at the present hour:

The sudden change in the condition of four millions of our population from slavery to freedom, who in twenty-three years will be eight, and in forty-six years sixteen millions, will give rise to many questions in reference to their future status, which can not or will not be properly settled without such a convention. Notwithstanding all its tremendous sacrifices, the nation has not conquered even a short truce, much less a permanent peace, on the negro question. The second clause of the pending amendment to the Constitution is so indefinitely expressed as to leave in much uncertainty the amount of power it confers on Congress. This will cause prolonged, angry disputes in reference to the negroes, keep up the sectional strife and alienation, and may occasion another civil war. The disastrous results of the last afford an all-sufficient warning against whatever may tend to produce another. These questions should all be settled by new men, directly from the people, who, without passion or prejudice, will settle them according to the justice of an enlightened policy, and in accordance with the deliberate advised will of the whole nation, in reference to its future peace and welfare, under a proper regard for the rights and interests of the negroes, and under the influence of the purest humanity. They will decide upon the policy of devoting the public lands to the future amelioration of the negroes, as practical experience may advise, whether by Central American colonization, or by procuring for them separate Territorial Governments and homes in Western Texas and Southern Florida, ultimately to be detached from the Union. They will, like Christian statesmen, devise some plan by which to avert that doom of negro extinction predicted by many of our wisest statesmen, with those earnest emancipators, Thomas Jefferson and Henry Clay, among them. They will be influenced by none of that bitter resentment which would seek vengeance upon the South reckless of humanity toward the negroes.

Next in importance, if not indeed of still greater importance, among the reasons for holding a convention, is the necessity for giving the Constitution a careful overhauling and thorough repair. This is a duty to the Constitution itself, after the lapse of every considerable period, for the purpose of keeping it in healthful action, according to the wise theory of its construction; and at the present juncture, when it has so recently suffered such violent straining, it is a duty of imperative obligation.

Among the doubts which need settling by a convention, as to the powers of Congress and of the President, the following may be instanced:

1. To make paper money a legal tender.
2. To enforce a conscription.
3. To make internal improvements.
4. The power over public lands and Territories.
5. The power of confiscation.
6. The power to temporarily supply *any* vacancy in the Presidential office; and also give Congress power to order another election of President when needed, as when no election is made before the 4th of March; also to divide the States into separate Electoral Districts, if not so divided by their respective Legislatures.
7. The President's power to suspend the privilege of the writ of habeas corpus, and the right of Congress to transfer to him any part of that power, and especially making the transfer for an indefinite time and over an undefined section of country.
8. The President's power to establish and enforce martial law, with that of his trying and punishing citizens not engaged in the military or naval service.
9. The conflict of power between Congress and the President in the government of insurrectionary or rebellious States.
10. The mode of readmitting such States to a participation in the control of the Federal Government.
11. Placing an abuse of the patronage of the Presidential office under some effective control.
12. If practicable, without impairing any principle of republicanism, the rescuing that office and its partonage from the corrupt, injurious scramble of political parties.



13. Requiring a two thirds vote from each House of Congress for the admission of new States into the Union.

14. The pretended right of secession or nullification.

15. The citizenship or denizenship of negroes, with the right of the several States to discourage by legislation the amalgamation of the white and black races, and the power of Congress to promote such amalgamation, or to deport and colonize the blacks, with the policy of appropriating the public lands for their benefit.

16. Whether the power of Congress to naturalize foreigners is or shall be confined to those of the European race.

17. In avoidance of the probable danger of another attempt at forcible secession, it may be well for the convention to decide whether, when and how, Congress shall have the power to permit the secession of the States west of the Rocky Mountains.

18. To prevent corrupt packing, limit the number of judges of the Supreme Court.

19. Settle the number of delegates to a national convention, the mode of their election, and their apportionment among the States.

Much time will be required to obtain a convention, and therefore the effort in that behalf should commence at once. It should be accomplished, if possible, before the next Presidential election ; otherwise it will become the chief question in that election. This is greatly to be deprecated. Such a convention should not be the result of an excited party strife, that would leave neither the nation nor its delegates to the convention in proper temper or frame of mind for the discharge of its duties. Besides, such a contest, though certain to result in favor of the party espousing a convention as its platform, by the election of their President and a large majority of the House of Representatives, yet the bad feelings generated by the contest would probably prevent more than a third of the States from uniting in the request for its call in the legitimate mode ; or, if called, prevent more than a fourth from ratifying the action of the convention, thereby creating the necessity for an illegitimate convention. It would be in vain to show to the smaller States that they would be much more liberally treated by a legitimate than by an illegitimate convention. The former would give the smallest one Senator, whilst the latter would most probably reduce many of the smaller *new* States to their

former territorial condition, without the privilege of being readmitted into the Union, until they had each acquired a population of three or four hundred thousand. Such prudential arguments seldom or never have convincing influence with excited minds. They would obstinately withhold their consent, and the vast majority of the nation needing and desiring the proposed redress would be driven to a convention illegitimately obtained. The facility of so obtaining a convention, whose action would ultimately prevail throughout the Union, may be judged by the fact that ten of the larger States, lying compactly together in the center of the Union, contain eighteen millions of population, which is a majority of the whole nation, and renders their fiat as to any just reform perfectly uncontrollable, even if it were at all practicable to get the other States to act in concert against the accomplishment of their will. All this, too, without a blow being struck, and the whole peaceably done without even an act of legally-defined rebellion. But a majority of the other States, instead of opposing, would co-operate with those ten, and most probably attend the convention called by them. Still, even such bloodless, peaceable revolution is to be deprecated and avoided, if practicable. Constitutional sanctity, the very life-principle of our liberty, has already been too severely shaken to put what remains of it in peril by resort to any such extra-constitutional remedy. Let us avoid the peril by removing the injustice complained of by four fifths of the nation. With the exception of the thirteen original States, no State has even the semblance of moral right to refuse its assent to the redressing such enormous wrong. The selfish complaining of a State at being forced into doing or submitting to justice by such gentle coercion will meet with little sympathy from the disinterested part of the world.

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There is in the position of Kentucky what renders it peculiarly appropriate that she should take the initiative in calling for a National Convention. Her aim in the past troubles, so far as she was permitted, was by preserving a quasi neutrality, to keep herself in an attitude to act as mediatrix between the North and the South. The decided efficient aid which she gave the North, when compelled by the South to take sides, has not altogether deprived her of the

prerogative she sought of being the bearer of the olive-branch. Nor will that pretension be denied by the North on account of her slaveholding, as in despite of that she so abundantly signalized her loyalty to the Union. She can tender the olive-branch in no mode so appropriate as in recommending a National Convention, because there is no other remedy sufficiently efficacious, and because it indicates no leaning toward either side.

A reconstructed or restored Union will be little worth without a restored amity. We must be very careful not to nurture fifteen of the States into a huge Poland. To prevent that, there must be restored amity; there must be conciliation instead of aggravation on the negro question. Quiet on that subject is indispensable. Congress has not, nor under the pending Constitutional Amendment will it obtain, the power necessary to giving quiet. That it did not possess such power, even when aided by the Supreme Court, witness the various unavailing Congressional compromises and the Dred Scott decision. Every thing that Congress shall do or attempt under the second clause of the amendment, instead of soothing, will only aggravate the sectional animosity. However pure and patriotic may be the motive of the ruling majority in Congress, it will obtain credit at the South for nothing of the sort, but all will be ascribed to hate of the Southern whites. The arch-fiend himself could not devise a better mode by which speedily to cause another civil war than the use of aggravating measures, under such inadequate grant of power. What the occasion requires is some authoritative settlement of the negro question, the adoption of some permanent policy to which the people of the fifteen slave States can advisedly conform their action. Without such settlement there is every probability that those fifteen States will be in rebellion before the lapse of many years—a rebellion not in favor of disunion, but within the Union, in resistance to supposed Government oppression—a rebellion much more formidable than the last, because it will be maintained by perfect unanimity among the people of the rebelling States, and aided by the bone and muscle of their freed negroes, whilst the attempt to suppress it will be sustained by no such unanimity among the Northern people. Any such rebellion, any mode of civil war between North and South, promises nothing but disaster to Ken-

tucky. Her statesmen can not be too vigilant in guarding against the danger.

There is always much hazard in calling a convention to revise a State Constitution, because there is nothing to check the temporary caprice or passion of a bare majority of the people. But there is no such hazard from the call of a National Convention, as its action is of no avail till ratified by three fourths of the States. This conservative feature of the Constitution amply secures against pernicious alteration, or any alteration having even the tinge of sectionalism. It will compel the convention into healthful, proper compromise upon all subjects that have heretofore been the occasion of sectional strife. If the result of the rash experiment of negro emancipation shall not have been sufficiently developed when the convention acts, its final settlement may be left to the discretion of Congress, acting under the restraint of a two thirds vote, or such action may be subjected to the ratification of a majority of the slave States.

The ingrained prejudice at the South in favor of State rights and State sovereignty presents a much more formidable difficulty to obtaining a convention, and the ratification of its needful acts. Most of that prejudice, or, more properly to speak, that long-fixed opinion, does not rest, as it never did, upon the supposed necessity of State rights for the preservation of negro slavery, but as an indispensable, all-important part of our federative system, the only protection against that most abominable of abominations, a consolidated democracy. All their great statesmen have taught this lesson as to State rights, and the Southern people will neither unlearn nor needlessly violate the teaching. The equal State suffrage in the Senate and in the House also, when voting on a Presidential election, being so large a part of the original compromise between State power and the power due to population, that element of State equality will not be surrendered without adequate motive. Fortunately or unfortunately, that motive now exists, and the nation should avail itself of the opportunity it affords for obtaining the necessary reform.

The almost unanimous opinion of the more intelligent people in the slave States, is that the freed negroes will prove a most grievous nuisance, that may lead to much bloody strife, and is certain to hinder the growth and prosperity of their States. They see neither dispo-



sition nor power in Congress to relieve them from the nuisance; but the apparent disposition of the North is rather to rivet the chain which binds in Mezentian torture to the living South the carcass of defunct negro slavery. In the hope of being relieved from this torture, and the apprehended tyranny which they suppose Congress will attempt under the second clause of the pending amendment, they will consent to the call of a convention. Should the convention propose an amendment, promising substantial relief, and weld it with another for the surrender of equal State suffrage, the South will ratify the two together.

Not more than two of the slave States are likely to remain permanently in the class of smaller States, and the large majority of them will not, therefore, have any peculiar local motive for refusing such surrender. If the larger States will agree that each Presidential Elector shall be elected from a separate district, a most ample equivalent would be given, and a much needed improvement made in the frame of the government. The now immense and always increasing patronage of the President gives him an influence over Congress that renders his election the most important function performed by popular vote. It also enhances the power of population, and the subdivision of the electoral vote of the larger States would, therefore, take from them a power fully equal, so long as we are under the control of political parties, to the proposed surrender of equal State suffrage.

The eminent political thinkers of England have long been engaged, with good prospect of success, in an earnest endeavor to obtain a reform in their Parliamentary representation, which shall give minorities a representative from very many localities who are now wholly unrepresented because of their being in the minority. The plan advocated by the distinguished Minister, Earl Russell, and many others of high position and influence, is to have three members elected from every district, but not permit the voters to vote for more than two candidates. This reform they urge upon incontestable principles of intrinsic justice and sound policy. The same reasons require much more strongly a similar reform of our elective system, which ought, as is professed, to be based, as far as practicable, upon principles of pure justice.

At the last Presidential election, Mr. Lincoln, with only some



eighteen hundred thousand of the popular vote, obtained one hundred and eighty electoral votes; that is, an electoral vote for every ten thousand of his voters; whilst Mr. Douglas, with thirteen hundred thousand of the popular vote, obtained only twelve electoral votes; that is, an electoral vote for more than every one hundred thousand of his voters. This is full proof that, however seemingly just in theory, our elective system is somehow radically unjust in practical results. The injustice arises principally from allowing the States to appoint their whole quota of electors by general ticket. If that be the sole cause, the district system would be a perfect remedy, whilst rendering other essential benefits. Nothing would better tend to keep alive the feeling of a common nationality throughout the Union. At all Presidential elections the people of each section would find that in every locality, however remote, they had *sympathizing countrymen* co-operating with them for some important national purpose. It is fortunate that so desirable a reform will afford adequate indemnity for the indispensable readjustment of the original compromise between State power and the power of population.

Whilst yielding assent to the district system, the larger States will naturally and properly require that the smallest States shall each have only one Senator; those with half a million of population two; those with a million three; those with two million four, and so on; another Senator for every additional million of population. Some such modification of the structure of the Senate is not merely required upon principles of equity and justice, but is imperatively required for reasons of sound policy; for nothing can be more certain than that the change will sooner or later be made *per fas aut nefas*, if not voluntarily yielded.

In my letters on the Presidency, first published in 1840, the participation of the House of Representatives in the Presidential election was denounced as a gross blunder of the Constitution, and the more pernicious because, according to all probability, the devolution of the election upon the House would be of frequent occurrence. Judge Story, in his commentary, whilst giving his own opinion as to its probable frequency, corroborates it by that of eminent framers of the Constitution—Mr. Madison, among them—to the same effect. If such was their opinion, it is incomprehensible how the convention

could have deemed it expedient to devolve the settlement of the election upon the House. Its main function being that of watching and checking executive action, there is an obvious incompatibility in its having any thing to do with the election of President, as the theory of the Constitution in dividing the powers among separate independent departments is thereby marred, if not nullified, to an important extent. An election by the House will certainly cause its members to take sides for or against the person elected, even before his inauguration, which is pernicious and repugnant to the proper discharge of the duty of the members. Besides, it is just such a pre-existing body, liable to be tampered with, as the convention professedly determined should not be trusted with the election. It would have been far better to have followed the example of some of the States, who, when no candidate receives a majority of all the votes given, refer the election back to the people. By retaining the electors in office for four years, as they should be, the election could be referred back to them to decide between the three highest on the list, and on their failure to decide, by dropping the lowest, upon another reference, compel a decision between the two highest. The electors so retained could also be made to perform the important duty of filling a vacancy in the Presidential office when there is a considerable part of the then Presidential term unexpired.

State-right jealousy would prevent such reform by the ordinary mode of amendment, or in any mode but that of a convention, where a fair compromise could be obtained by an interchange of equivalents. Such a reform would of itself furnish adequate motive for the call of a convention, unless indeed the nation can be induced to do something still better, by obtaining our Presidents upon some plan compatible with republicanism, which shall rescue the office from the pernicious scramble of political parties. This requires the now seemingly improbable regeneration of our political leaders, and the manifestation by them of enough disinterested patriotism to allow the nation to place the Presidency out of the reach of party machination. It has long ago been the expressed opinion of many of our most eminent men, as also of the soundest thinkers in Europe, that our Presidential elective system would necessarily germinate civil wars. This opinion is amply justified by the late civil war.

Every dispassionate, intelligent man must have seen in that war the result of party contests for that office. Every such man must recognize the fact that a recurrence of such wars is only a necessary result from our mode of obtaining a President. He must also have recognized the further fact that, by reason of that mode of election, all political currents set toward the maelstrom of party power, which has heretofore given, and will continue to give us, in lieu of a Constitution-guarded government, a purely party government of absolute, uncontrollable power.

Should the demand for a convention pass the Legislature by a vote approaching unanimity, the subject will be presented for the national consideration under most favorable auspices. No State could obtain a more candid hearing on that question than our mother Kentucky, who is so pridefully loved by her children.

Respectfully,

S. S. NICHOLAS.



